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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2003

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BOY SCOUTS OF AMERICA, *et al.*,
Petitioners,

v.

NANCY WYMAN, COMPTROLLER OF THE STATE OF CONNECTICUT, *et al.*,
Respondents.

♦———♦

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

♦———♦

BRIEF OF THE AMERICAN LEGION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

♦———♦

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INTEREST OF AMICUS

The American Legion ("the Legion") is the largest veterans organization in the United States, comprising more than 2,600,000 current and former members of our armed services, and long has worked to foster patriotism, character, and good citizenship. An Act of Congress chartered the Legion as a corporation in 1919. *See* Act of September 16, 1919, ch. 59, 41 Stat. 284 (currently codified at 36 U.S.C. §§ 21701-08 (2000)). The Legion's statutory purposes include upholding and defending the Constitution and supporting its members' service to their country. *See* 36 U.S.C. § 21702 (2000).

The Legion long has supported the Boy Scouts of America. Indeed at its first national convention in 1919, the Legion adopted a resolution that read, in part: "The American Legion

heartily commends the principles and achievements of the Boy Scouts and recommends that each post assist the Scout troop in its community in whatever manner practicable." Since that time the Legion's support for the Boy Scouts has remained unstinting. Legion posts throughout the United States routinely sponsor and support Boy Scout troops with financial and personal assistance. They currently support more than 2600 Boy Scout troops nationwide. And in 2000, while *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), was pending, the Legion reaffirmed its fundamental view that the Boy Scouts should retain the liberty to maintain membership and leadership standards that are consistent with its mission of instilling in young boys the virtues of a Scout.

More saliently, the Legion, like other groups, is committed to maintaining its own liberty to administer standards and membership policies consistent with its organizational goals. As a voluntary veterans organization, the Legion is vitally interested in associational freedom. There is no test for Legion membership other than honorable military or naval service to the United States. *See* 36 U.S.C. § 21703 (2000) (establishing honorable service in the armed forces during any listed period of hostilities as membership requirement). Nor has the Legion polled its members as to their personal beliefs: In all likelihood, some among the Legion's more than 2.6 million members have personal reservations about the Boy Scouts' membership and leadership standards, either because of their own beliefs or their own sexual orientation. Indeed, the Legion has at least one Post that comprises almost exclusively homosexual veterans – the Alexander Hamilton Post in San Francisco.

But this is not a case about alleged bias. It is a case about the freedom of association and the fundamental liberty of a voluntary organization to endorse traditional American values without suffering a governmental penalty because of its viewpoint. This case is, in the end, about the core American virtues of freedom to speak and freedom to associate – the very

freedoms that Legion members fought so unstintingly to preserve through their wartime service to our Nation.[1]

SUMMARY OF ARGUMENT

Review in this case is plainly warranted. The right of free association is a core constitutional right enshrined in the First Amendment as a corollary to the rights of free speech and freedom of expression. The decision of the Second Circuit threatens to eviscerate those rights by allowing the government to punish their exercise.

As this Court has already made clear, the Boy Scouts are free to exercise the right of free association by adopting membership and leadership standards consistent with the beliefs of the organization. Thus, Connecticut could not directly enforce its anti-discrimination laws to require the Boy Scouts to accept as members avowed homosexuals whom the Boy Scouts wish to exclude.

Yet, in this case Connecticut attempts to do indirectly precisely that which *Dale* precludes it from doing directly. By excluding the Boy Scouts from the general workplace charity program, Connecticut seeks to punish the Boy Scouts for the very exercise of the associational rights that *Dale* protects. In doing so Connecticut improperly attempts to enforce a governmental orthodoxy of thought by imposing a financial penalty for the expression of contrary views.

There can be little doubt that the Boy Scouts have been excluded from the workplace charity program based upon the content of their views, not some value-neutral set of criteria. No other allegedly discriminating organization has been excluded – yet the record contains evidence that many other participating organizations discriminate in the provision of

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[1] Counsel for the parties have consented to the filing of this *amicus* brief. Their joint notice of consent is on file with the Clerk of the Court. Pursuant to Supreme Court Rule 37.6, *amicus* states that this brief was not prepared, written, funded or produced by any person or entity other than *amicus* or its counsel.

services or in their own membership policies. Connecticut's policy of discriminating among discriminators manifests its own intent to impose punishment only on those who do not conform.

Finally, taking Connecticut at its word, if this Court fails to review and reject the position advocated by Connecticut, the effects on other organizations would be extensive. The import of the rule advanced by Connecticut would permit the States to influence indirectly, in a myriad of ways, the conduct of organizations with which the States disagree. Absent review by this Court, one can readily envision States that will exclude any theistic organization, (or, in other States, any organization that does not espouse traditional values), from a wide-range of benefits. The rationale of the court below would allow exclusion from rental programs, workplace charity programs, and other indirect benefits, all as a means of enforcing a State-approved belief code.

Because of these potentially pernicious consequences, the petition should be granted and the judgment below reversed.

ARGUMENT

I. The First Amendment Interests At Stake Are Fundamental.

The decision of the Second Circuit undervalues the associational freedoms at issue in this case. This Court has long recognized that there is a core constitutional right "to enter into and maintain * * * intimate or private relationships * * * [and] to associate for the purpose of engaging in protected speech." *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 544 (1987). Thus, "implicit in the right to engage in activities protected by the First Amendment" is a "corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

This freedom to associate "is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Dale*, 530 U.S. at 647-48; *see also Roberts*, 468 U.S. at 622 (right of expressive association is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority"). Diversity in viewpoints and freedom of expression is not advanced by compelled governmental uniformity of views. Rather, associations are free to choose whether to propound or not propound "a particular point of view, and that choice is presumed to lie beyond the government's power to control." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 575 (1995).

Thus, as this Court has succinctly held, "[f]reedom of association * * * plainly presupposes a freedom not to associate." *Roberts*, 468 U.S. at 623. Recognizing the power of this legal principle, just three years ago this Court rejected efforts to compel the Boy Scouts to admit avowed homosexuals as members and leaders. The Boy Scouts were, correctly, adjudged to be an expressive association entitled to First Amendment protection. The forced inclusion of members who did not hold its views would significantly burden that right and was, therefore, deemed impermissible. *Dale*, 530 U.S. at 659.

Connecticut's attempt to remove the Boy Scouts from its workplace charitable campaign is nothing more than an effort to achieve indirectly what Connecticut cannot achieve directly. By failing to recognize this simple fact, the decision of the Second Circuit substantially undervalues the Boy Scouts' protected First Amendment freedom of association.

II. The Decision Of The Second Circuit Eviscerates Fundamental First Amendment Interests.

1. This Court has repeatedly held that access to generally available government programs and benefits must be granted in a "viewpoint neutral" manner, and may not be restricted based upon the content of the views expressed by those seeking

access to the government benefit. *E.g. Good News Club v. Milford Central School*, 533 U.S. 98 (2001) (access to school facilities); *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995) (access to school funding).

This conception of neutrality has found ready applicability in the context of access to governmental charitable campaigns. Thus, in *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788 (1985), this Court concluded that the federal government could limit access to its workplace charitable campaign only if the restrictions on access were "reasonable in light of the purpose served by the forum" and "viewpoint neutral." *Id.* at 806.

This should, of course, have ended the matter. As even the court below recognized, application of Connecticut's law to the charitable campaign had a "differential adverse impact" on the Boy Scouts' associational freedom to express its view. Pet. App. 23a. The existence of this disparate impact[2] is strong evidence of discriminatory intent and proof that the application of the law is not "viewpoint neutral." Given the strength of the associational freedom at issue, that should have been sufficient to determine the question.

2. As this Court has said, a restriction on access to a government-sponsored charitable campaign fails if it is "an effort to suppress expression merely because public officials oppose the speakers' view." *Cornelius*, 473 U.S. at 800. Even if it were necessary for the Boy Scouts to show more to demonstrate purposeful suppression of a disfavored viewpoint than the differential impact acknowledged by the Second Circuit, the evidence before that court amply met that burden.

Connecticut's anti-discrimination laws are, to be sure, of general applicability and not facially discriminatory in

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[2] The Second Circuit attempted to obscure the force of its conclusions by eschewing the use of the word "disparate," *see id.* n. 6, preferring to characterize the effect of the State's actions as a "differential impact." This linguistic subterfuge is unavailing for, however characterized, Connecticut's action has the effect of treating the Boy Scouts differently.

viewpoint. They are, however, applied in this instance in a discriminatory manner solely for the purpose of erecting barriers to the Boy Scouts' expression of its protected message. Connecticut manifestly turns the law of discrimination on its head, using its anti-discrimination laws to discriminate and, in the process, to enforce a compelled orthodoxy of thought.

Despite the Second Circuit's conclusion to the contrary, the record establishes that Connecticut discriminates between discriminators – it selectively enforces its laws only against the Boy Scouts' disfavored anti-homosexual viewpoint and not against any other group whose viewpoint encompasses distinctions drawn on the basis of race, gender, religion, or sexual orientation.

To this, Connecticut's only response – accepted by the Second Circuit, *see* Pet. App. 28a-30a – is that it chooses to exclude from the charitable campaign those who discriminate in their membership and employment policies while permitting organizations to participate even though they may discriminate in their policies in providing services.

But this is a distinction without a difference. The membership/service policy dichotomy does not follow from the First Amendment; nor does it follow from the text of Connecticut's anti-discrimination laws. It is false, as well, because other groups that discriminate in membership practices are included in the charitable program – presumably because their anti-*hetero*sexual bias is more condign to Connecticut's political hierarchy. The membership/service policy distinction also calls into question the considered judgment of Congress, which has permitted protected discrimination in membership while prohibiting discrimination in the provision of federally funded services. The Second Circuit's distinction is, in the end, irrational, as it ignores the ample evidence of far greater differentiation in the provision of services to different segments of the population by charitable program participants. The distinction is, in short, logically incoherent, and little more than a façade to conceal an evident anti-Boy Scout bias.

a. Nothing in the text or history of the First Amendment suggests any basis for the membership/services distinction drawn by the court of appeals. To the contrary, this Court has clearly held that governmental compulsion to abandon an associational freedom is impermissible whether it acts directly or indirectly on speech whatever form that speech takes. In *Healy v. James*, 408 U.S. 169 (1972), this Court considered an indirect effect on an organization's associational interests (there, the right of students to affiliate with national socialist student organization). As the Court trenchantly observed: "The Constitution's protection is not limited to direct interference with fundamental rights. * * * 'Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interference." *Id.* at 183 (citations omitted).

Connecticut's own anti-discrimination laws also counsel, strongly, against the reasonableness of the line drawn by the court below. Both the general anti-discrimination law, Conn. Gen. Stat. §§ 46a-60(2) & (6), and the sexual orientation law, *id.* §§ 46a-81c(2) & (4), make it unlawful, for example, for an employment agency -- defined as "any person undertaking with or without compensation to procure employees or opportunities to work" *id.* § 46a-51(11) -- to fail to refer for employment "*or otherwise discriminate*" against any person because of race, sex, age, religion, mental disability, learning disability, sexual orientation, or other protected classification. Thus, as the italicized portion of the statute makes clear, Connecticut's prohibition on discrimination is comprehensive – it makes no distinction between discrimination in the provision of membership and employment opportunities and the discrimination in the provision of services. Rather any organization that "otherwise discriminates" is subject to sanction – and the State's decision not to apply this ban in a comprehensive, consistent fashion is clear evidence of its viewpoint-based decision to exclude the Boy Scouts because of its disfavored speech.

And the prohibition on indirect State involvement in or support for discriminatory practices is equally broad. Connecticut law requires that "[a]ll services of every state agency * * * shall be performed without discrimination" and that "[n]o state facility may be used in the furtherance of *any* discrimination." Conn. Gen. Stat. §§ 46a-71(a) & (b) (emphasis supplied), *reprinted at* Pet. App. 57a; *see also id.* § 46a-76(b) ("No state agency may provide * * * financial assistance to * * * organizations which discriminate"), *reprinted at* Pet. App. 58a-59a. Again, the prohibition on indirectly assisting discrimination is comprehensive and absolute – a statutory judgment that directly contradicts the membership/services distinction on which the decision below is premised.

b. More saliently, there is direct evidence in the record of the viewpoint discrimination exercised by Connecticut in seeking to deny the Boy Scouts access to the workplace charitable collection program. Leslie Brett (an "out lesbian," former Chair of the Connecticut Commission on Human Rights & Opportunities, current Executive Director of the Connecticut Women's Education and Legal Fund ("CWELF"), and a member of the Stonewall Foundation), testified that Stonewall -- which is in the Directory of acceptable charitable organizations -- would exclude someone from its leadership based on heterosexual; sexual orientation:

> Q. What is the purpose of the Stonewall Foundation?
>
> A. The Stonewall Foundation is the education, public awareness organization on lesbian and gay issues.
>
> ***
>
> Q. Has the Stonewall Foundation ever [accepted] a member who was opposed to gay or lesbian rights?
>
> A. Not knowingly.
>
> Q. If they knew, they wouldn't accept that person as a member?

A. We wouldn't include that person in our activities speaking or educating the public.

***

A. We wouldn't let that person speak or represent the Stonewall Foundation.

C.A. App. 352, 353.

If Connecticut were truly to adhere to its professed policy of excluding groups based upon discriminatory membership policies it would, presumably, have begun the process of excluding Stonewall from the charity directory. To the best of *amicus*' knowledge it has not. Nor has it made any apparent effort to test whether any other groups with seemingly similar discriminatory membership policies are, in fact, pursuing those policies. *See* C.A. App. 164-65, 290, 292 (State did not consider excluding other groups).

c. The irrationality of the membership/services distinction drawn by the Second Circuit is best exemplified, however, by its inconsistency with existing federal practice. If taken seriously, the court's decision threatens a host of existing federal programs authorized by Congress.

Many charitable religious organizations offer services to the general public. But, the underlying organization is not open to all. For example, the Salvation Army may help anyone who walks through the door, but its leadership positions are limited to the faithful.

Recognizing the utility of these organizations and the services they provide, Congress has authorized them to receive federal funding to provide benefits to the needy, so long as those benefits and services are provided on a non-discriminatory basis. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 104, Pub. L. No. 104-193, 110 Stat. 2105. This program, known as Charitable Choice, permits States to provide federal funds through, for example, the Temporary Assistance for Needy Families ("TANF") program (codified at 42 U.S.C. § 601 *et seq.*) to faith-based organizations for use in providing services to those

who are eligible for the TANF program. States are authorized to do so notwithstanding the fact that the faith-based organization may limit *membership* based upon religious affiliation. All that a faith-based organization must do is ensure that all eligible recipients are *served* without regard for their religious affiliation.[3]

As should be evident, the decision below precisely *reverses* the paradigm adopted for Charitable Choice by the Congress. The court below considers it consistent with the First Amendment to preferentially punish the speech of those who discriminate in membership policies while allowing discrimination in the provision of services. By contrast, Congress, through the Charitable Choice programs, has expressed a preference for ensuring that services effected by government activity be provided in a non-discriminatory manner while allowing service-providers to maintain the fundamental expressive associational integrity of their organizations through membership practices that limit their membership. The decision below is so at odds with this construct that it calls into question a host of existing federal programs. Conversely, the decision below is so far contrary to Congress' considered judgment regarding the relative effects of discrimination in services and membership that it can fairly be subject to question on that basis alone.

d. The Boy Scouts' employment policy tracks what it can do constitutionally, as approved in *Dale*. There was no finding that Boy Scouts violated any employment discrimination law – only that its membership policy is one of which Connecticut disapproves. Yet, Connecticut's disapproval is a strangely limited one – it appears to apply to the Boy Scouts, and their

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[3] The Charitable Choice program has since been expanded to other federal programs, both by statute (*e.g.* Community Opportunities, Accountability, and Training and Educational Services Act of 1998, § 202, Pub. L. No. 105-285, 112 Stat. 2702 (extending Charitable Choice to Community Services Block Grants)) and executive order (*e.g.* Exec. Order 13279 (Dec. 12, 2002)).

membership practices, but to ignore examples of discrimination in the provision of services.

The record is replete with evidence that other organizations provide services to only a narrow segment of the population. In short, they "discriminate" in their services in ways that, at least textually, would appear to contravene Connecticut law (at least to the same extent that the Boy Scouts can be said to contravene it). *See* Conn. Gen. Stat. §§ 46a-60(2) & (6) (unlawful to "otherwise discriminate" against any person because of race, sex, age, religion, mental disability, learning disability, sexual orientation, or other protected classification; *id.* §§ 46a-71(b) ("[n]o state facility may be used in the furtherance of *any* discrimination") (emphasis supplied) *reprinted at* Pet. App. 57a; *id.* § 46a-76(b) ("No state agency may provide * * * financial assistance to * * * organizations which discriminate"), *reprinted at* Pet. App. 58a-59a.)). Consider the evidence in the Directory of Charitable Organizations for the Connecticut State Employees' Campaign -- a partial listing of such organizations would include the following:

- Noank Baptist Group Homes, Inc.: "Provides a structured home setting for troubled adolescent girls with services to meet their * * * life skills, vocational, and educational needs." *See* C.A. App. at 554.
- Spanish American Development Agency (S.A.D.A): "Provides social services, employment * * * to inner-city low-income people, mostly Hispanics." *Id.* at 552.
- Co-Opportunity: "Empowers low and moderate income individuals to increase their capacity as community stakeholders by providing services in: Housing, Jobs, Training and Economic Development." *Id.* at 557.
- INROADS/Greater Hartford & Springfield, Inc.: "Develops and places talented minority youth in business and industry and prepares them for corporate and community leadership." *Id.* at 557.
- YWCA Family Center – Meriden: "Offers services and advocacy for women and girls and their families, childcare,

youth activities, education, rape crisis assistance, health, employment and leadership." *Id.* at 559.

- Girls Incorporated: "Provides girls an informal curriculum of vocational/recreational programs in areas of . . . career/college planning." *Id.* at 565.
- Connecticut Puerto Rican Forum: "Is an established community based organization providing training and employee services to residents of the Hartford area." *Id.* at 567.

These are doubtless organizations of great value, providing useful services to their targeted populations. But their utility cannot obscure the fact that they choose to provide services to a target population, and exclude others, on the basis of classifications that are facially prohibited by Connecticut law. Worse yet, Connecticut can offer no rational explanation for excusing the use of prohibited classifications in the context of services while prohibiting it in the context of membership. Given the widespread nature of the practices engaged in by other organizations in the Directory one can only be left with the powerful inference that the membership/services dichotomy is a convenient fiction – adopted to ensure that the Boy Scouts are penalized for their viewpoint.

3. Finally, it bears noting that there is, lurking behind the distinctions being drawn, an unstated yet palpable anti-religious component to Connecticut's decision. All Boy Scouts are asked to follow the Scout Oath and Law, which, in turn, require each Scout to do his "duty to God" and be "morally straight." The Oath embodies traditional values, *Dale*, 530 U.S. at 649 and, as a consequence, the Boy Scouts accept neither atheists or agnostics, *see Welsh v. Boy Scouts of America*, 993 F.2d 1267 (CA7 1993), nor avowed homosexuals, *see Dale*, 530 U.S. at 653-54. Thus, at its core, the Boy Scouts' avowed principles rest on a fundamentally theistic (though non-denominational) foundation.[4]

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[4] Indeed, at least one district court recently voided a lease held by the Boy Scouts on public property on the grounds that the granting of the lease was a preferential treatment of a "religious organization"

But this Court has squarely held that religious organizations may not be excluded from programs in which they are otherwise qualified to participate on account of their religious beliefs. *E.g. Rosenberger*, 515 U.S. at 831-32 (finding viewpoint discrimination in exclusion of student religious publication from school funding on basis of publication's religious viewpoint); *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 393-94 (1993) (viewpoint discrimination in exclusion of religious group from use of school facilities). The Boy Scouts' exclusion from the Connecticut workplace charity program is indistinguishable from the impermissible exclusions at issue in *Rosenberger* and *Lamb's Chapel*.

Indeed, the potential scope of the Second Circuit's ruling (as demonstrated by the subsequent *Barnes-Wallace* decision) is chilling. If widely adopted, the court's holding would, in effect, permit governmental discrimination against any organization that acknowledges the existence or importance of a deity. For example, the Preamble to the Legion's National Constitution begins "For God and country * * *." Surely such a statement is not to be construed as a basis for barring the Legion (or similar organizations) from participation in any government benefit. *Compare Regan v. Taxpayers With Representation*, 461 U.S. 540, 551 (1983) (legitimate government policy to preferentially subsidize veterans' organizations). Yet that is the apparent import of the Second Circuit's decision.

III. The Decision Calls Into Question The Practices Of Innumerable Organizations.

As we have said, the membership/services distinction is little more than a convenient legal fiction. But even that fiction is likely to have widespread ramifications. We urge review because the line drawn by the Second Circuit, if sustained,

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in violation of the Establishment Clause. *See Barnes-Wallace v. Boy Scouts of America*, 275 F.Supp.2d 1259 (S.D.Cal. 2003).

would call into question the ability to have access to government benefits, such as the charitable directory at issue in this case, for many heretofore-eligible organizations. A brief survey of publicly available literature strongly suggests that a number of such organizations (all of which appear in the Directory, *see* C.A. App. 546, 548, 555, 556, 563, 567) would now be subject to governmental coercion because of their "discriminatory" membership polices.

Some restrict membership based upon age – a clearly prohibited category. Consider, for example, the Boys and Girls Club of Hartford, Inc. [http://www.bgca.org/ programs/], which limits membership to children ages 6 – 18. Others make membership distinctions based upon gender. For example, the Girl Scout Council of Southwestern Connecticut, Inc. [http://www.gscswct.org/ our%20hist.htm] "is dedicated solely to girls" ages 5 – 17, a double failing as the limitation is both age and gender-based.

Still other organizations have a seemingly religious character to their membership, even more so than the Boy Scouts. The Girl Scout Promise [http://www.girlscouts.org/ program/ promiselaw.html] requires those who are members to promise "to serve God." Meanwhile, Girl Scouts participate in the same religious emblems programs [http://www.praypub.org /main_frameset.htm] that Boy Scouts do.

Still other organizations wear their membership preferences on their shirtsleeves. For example, Nutmeg Big Brothers/Big Sisters, Inc. [http://wwwnutmegbigbrothers bigsisters.com] is "very much in need of male volunteers--- especially African American, West Indian and Latino male volunteers. Needless to say, if you're a woman don't let this discourage you from investigating the possibility of becoming a mentor."

Although others may not make membership criteria explicit, they likely would not tolerate dissenters among the membership or leadership: an anti-Catholic or pro-abortion advocate almost certainly would not be welcome in Catholics for a Free Choice [http://www.cath4choice.org/] and an anti-

feminist probably would not considered for leadership in CWEALF [http://www.cwealf.org/]. Similarly, someone advancing traditional family values would not be welcome as a leader in Stonewall Foundation, Lambda Legal Defense and Education Fund, Hartford Gay and Lesbian Health Collective [http://www.hglhc.org/], or Parents, Families & Friends of Lesbians and Gays ("PFLAG") [http://www.pflag.org/]. Indeed, PFLAG is so adamant that it even has a policy condemning the Boy Scouts. *See* C.A. App. 1030 (reprinting policy).

Are these organizations, as well, now to be investigated? Are their viewpoints to be held up to governmental examination? And, upon review, are they to be excluded from the workplace charitable campaign because they limit their membership in a manner wholly consistent with fundamental First Amendment associational freedoms?

* * * * *

Many years ago, Justice Brandeis noted that the First Amendment constrains governments, preventing them from securing "silence coerced by law – the argument of force in its worst form." *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). Connecticut's actions are nothing more than an effort to coerce the Boy Scouts' silence. If Connecticut views the Boy Scouts' beliefs as odious, it is free to say so; it is free to advocate its social view in the marketplace of ideas. But it may not base a decision to oust the Boy Scouts from a generally available government benefit upon the Scouts' disfavored message regarding homosexuality. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment below reversed.

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